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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/556,503	04/24/2000	Charles J. Burnett	10991754-1	7659

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EXAMINER

TAYLOR, BARRY W

ART UNIT PAPER NUMBER

2643

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/556,503

Applicant(s)

BURNETT, CHARLES J.

Examiner

Barry W. Taylor

Art Unit

2643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-18.

Claim(s) objected to: _____.

Claim(s) rejected: 19-26.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Continuation Sheet (PTO-303)

a. The Examiner reviewed Applicant's remarks wherein Applicants continue to argue that Qiu hubs are not positioned at end points of a call (see paper dated 6/23/2005, last six lines on page 7).

The Examiner notes that Applicants independent claims 19 and 26 generally recite the remote test unit positioned at an end point of call. The Examiner further notes that Applicants specification defines at the end point of call as nothing more than at a telephone central office (see Applicants original specification page 8 lines 15-16). Therefore, Qiu teaches (see at least col. 4 lines 1-28) wherein remote is another slave or the slave is another remote and the remote/slave examples include a network device such as a switch (i.e. a telephone central office).

b. Next, Applicants continue to argue that the hubs of Qiu do not make calls. Instead, the communications hubs perform continuity tests in response to calls made by other devices connected to the hub (see Applicants remarks starting at the bottom of page 7 (i.e. second to last line) and continuing to page 8).

The Examiner notes that if the end point of call as defined by Applicants specification page 8 lines 15-16 is a switch then the switch is connected to the device making the call which clearly reads on the teachings of Qiu. Furthermore, Qiu is very clear in that other conventional components not shown for clarity may be used, depending on the type of device and its operation in a network environment (col. 4 lines 48-52). Therefore, communication hub having "TONE GENERATOR" (see at least

figure 4 wherein communications hub actually uses conventional components) would be enough to read on Applicants general claim language.

c. Applicants, repeat the argument (see middle paragraph on page 8) that the hubs of Qiu are NOT positioned at the end point of a call.

See sections a and b listed directly above since Applicants specification page 8 lines 15-16 define the end point is nothing more than a central office (a.k.a. switch).

d. Applicants contend that the Examiner did not initial reference 1A (US Patent 4,258,236).

The Examiner is unable to confirm this since there are no recorded initialed 1449. Therefore, the Examiner kindly request Applicant to submit the original signed 1449 that Applicants are referring to at the bottom of page 9, paper dated 6/23/2005.


CURTIS KUNTZ
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